

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

G.D. SEARLE LLC and PFIZER ASIA PACIFIC
PTE. LTD.,

Plaintiffs,

v.

LUPIN PHARMACEUTICALS, INC., TEVA
PHARMACEUTICALS USA, INC., MYLAN
PHARMACEUTICALS INC., WATSON
LABORATORIES, INC., APOTEX INC., and
APOTEX CORP.,

Defendants.

CASE NO. No. 2:13-CV-0121

**DECLARATION OF JOSHUA A. MACK
IN SUPPORT OF
MYLAN PHARMACEUTICAL INC.'S
MOTION FOR SUMMARY JUDGMENT**

Document Electronically Filed

I, JOSHUA A. MACK, declare as follows:

1. I am a member of the bar of the State of California, admitted to practice before the United States District Courts for the Southern District of California, Central District of California, and Northern District of California. I have been admitted pro hac vice in the above-captioned case. I am an associate at the law firm of Wilson Sonsini Goodrich & Rosati PC, attorneys for defendants Mylan Pharmaceuticals Inc. ("Mylan") in the above captioned case.

2. A true and correct copy of the file history of U.S. Patent Application No. 08/160,594 is attached hereto as Exhibit 1.

3. A true and correct copy of U.S. Patent Application No. 08/223,629 is attached hereto as Exhibit 2.

4. A true and correct copy of excerpts from the November 5, 2013 deposition of Philip Polster II is attached hereto as Exhibit 3.

5. A true and correct copy of the October 11, 2013 expert report of Joseph F. Dellaria, Jr., Ph.D. is attached hereto as Exhibit 4. (filed under seal)

6. A true and correct copy of U.S. Patent No. 5,760,068 is attached hereto as Exhibit 5.

7. A true and correct copy of the October 11, 2013 expert report of Nancy Linck, Ph.D. is attached hereto as Exhibit 6. (filed under seal)

8. A true and correct copy of U.S. Patent No. 5,521,207 is attached hereto as Exhibit 7.

9. A true and correct copy of excerpts from Section 2.0 and 3.0 of Active Ingredients Approved Animal Drug Products ("Green Book") is attached hereto as Exhibit 8.

10. A true and correct copy of the file history of U.S. Patent Application No. 08/457059 is attached hereto as Exhibit 9.

11. A true and correct copy of U.S. Patent U.S. Patent No. 5,563,165 is attached hereto as Exhibit 10.

12. A true and correct copy of excerpts from the November 1994 International Application No. PCT/US94/12720 is attached hereto as Exhibit 11. (filed under seal)

13. A true and correct copy of the published PCT application is attached hereto as Exhibit 12.

14. A true and correct copy of excerpts from the November 13, 2013 deposition of Arthur Dean Olson is attached hereto as Exhibit 13.

15. A true and correct copy of excerpts from the Manual of Patent Examination Procedure Fifth ed. Rev. 16 (March 1994), Appendix T titled Patent Cooperation Treaty is attached hereto as Exhibit 14.

16. A true and correct copy of U.S. Patent Application No. 08/648,113 is attached hereto as Exhibit 15.

17. A true and correct copy of the Notification of Acceptance under 35 U.S.C. 371 from the file history of U.S. Patent Application No. 08/648,113 is attached hereto as Exhibit 16.

18. A true and correct copy of the October 10, 1996 preliminary amendment filed with U.S. Patent Application No. 08/648,113 is attached hereto as Exhibit 17.

19. A true and correct copy of the complaint in *Pfizer Inc. v. Teva Pharm. USA, Inc.*, Civil Action No. 04-754 (JCL) (D.N.J.) is attached hereto as Exhibit 18.

20. A true and correct copy of the Final Pretrial Order in *Pfizer Inc. v. Teva Pharm. USA, Inc.*, Civil Action No. 04-754 (JCL) (D.N.J.) is attached hereto as Exhibit 19.

21. A true and correct copy of the June 22, 2006 expert report of James W. McGinity, Ph.D. is attached hereto as Exhibit 20. (filed under seal)

22. A true and correct copy of an exhibit marked as Bulock 1 during the November 13, 2013 deposition of Joseph W. Bulock is attached hereto as Exhibit 21.

23. A true and correct copy of the Reissue Application Declaration Accompanying U.S. Reissue Patent Application No. 12/205,319 is attached hereto as Exhibit 22.

24. A true and correct copy of the December 3, 2009 Non-Final Rejection in the prosecution history of U.S. Reissue Patent Application No. 12/205,319 is attached hereto as Exhibit 23.

25. A true and correct copy of the September 22, 2010 Final Rejection in the prosecution history of U.S. Reissue Patent Application No. 12/205,319 is attached hereto as Exhibit 24.

26. A true and correct copy of the March 10, 2011 Request for Continued Examination in the prosecution history of U.S. Reissue Patent Application No. 12/205,319 is attached hereto as Exhibit 25.

27. A true and correct copy of the July 19, 2011 Statement of Substance of the Interview in the prosecution history of U.S. Reissue Patent Application No. 12/205,319 is attached hereto Exhibit 26.

28. A true and correct copy of excerpts from the July 10, 2012 Notice of Allowance in the prosecution history of U.S. Reissue Patent Application No. 12/205,319 is attached hereto as Exhibit 27.

29. A true and correct copy of U.S. Reissue Patent No. 44,048 is attached hereto as Exhibit 28.

30. A true and correct copy of the September 18, 2013 declaration of James A. Simon, M.D. is attached hereto as Exhibit 29.

31. A true and correct copy of the October 11, 2013 expert report of Bruce R. Carr, M.D. is attached hereto as Exhibit 30.

32. A true and correct copy of the November 15, 2013 expert report of James A. Simon, M.D. is attached hereto as Exhibit 31. (filed under seal)

33. A true and correct copy of the November 15, 2013 expert report of Robert J. Spar is attached hereto as Exhibit 32.

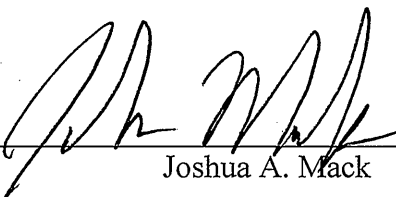
34. A true and correct copy of the November 22, 2013 declaration of Bruce R. Carr, MD accompanying Exhibit A, a copy of his October 11, 2013 expert report, is attached hereto as Exhibit 33.

35. A true and correct copy of the November 21, 2013 declaration of Joseph F. Dellaria, Jr., Ph.D. accompanying Exhibit A, a copy of his October 11, 2013 expert report, is attached hereto as Exhibit 34. (filed under seal)

36. A true and correct copy of the November 22, 2013 declaration of Nancy Linck, Ph.D. accompanying Exhibit A, a copy of her October 11, 2013 expert report, is attached hereto as Exhibit 35. (filed under seal)

I declare that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 22, 2013


Joshua A. Mack

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2013, a true and correct copy of the foregoing was filed electronically using the CM/ECF system. As such, this document was served on all counsel who have consented to electronic service, including as follows:

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